
HOUSE BILL 1805

State of Washington

57th Legislature

2001 Regular Session

By Representatives Barlean, Keiser, Darneille, Sehlin, Schual-Berke and Miloscia

Read first time 02/05/2001. Referred to Committee on Natural Resources.

1 AN ACT Relating to management of state-owned aquatic lands;
2 amending RCW 79.90.465, 79.90.475, 79.90.520, and 79.93.040; and adding
3 new sections to chapter 79.90 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 79.90.465 and 1984 c 221 s 4 are each amended to read
6 as follows:

7 The definitions in this section apply throughout chapters 79.90
8 through 79.96 RCW.

9 (1) "Water-dependent use" means a use which cannot logically exist
10 in any location but on the water. Examples include, but are not
11 limited to, water-borne commerce; terminal and transfer facilities;
12 ferry terminals; watercraft sales in conjunction with other water-
13 dependent uses; watercraft construction, repair, and maintenance;
14 moorage and launching facilities; aquaculture; log booming; and public
15 fishing piers and parks.

16 (2) "Water-oriented use" means a use which historically has been
17 dependent on a waterfront location, but with existing technology could
18 be located away from the waterfront. Examples include, but are not
19 limited to, wood products manufacturing, watercraft sales, fish

1 processing, petroleum refining, sand and gravel processing, log
2 storage, and house boats. For the purposes of determining rent under
3 this chapter, water-oriented uses shall be classified as water-
4 dependent uses if the activity either is conducted on state-owned
5 aquatic lands leased on October 1, 1984, or was actually conducted on
6 the state-owned aquatic lands for at least three years before October
7 1, 1984. If, after October 1, 1984, the activity is changed to a use
8 other than a water-dependent use, the activity shall be classified as
9 a nonwater-dependent use. If continuation of the existing use requires
10 leasing additional state-owned aquatic lands and is permitted under the
11 shoreline management act of 1971, chapter 90.58 RCW, the department may
12 allow reasonable expansion of the water-oriented use.

13 (3) "Nonwater-dependent use" means a use which can operate in a
14 location other than on the waterfront. Examples include, but are not
15 limited to, hotels, condominiums, apartments, restaurants, retail
16 stores, and warehouses not part of a marine terminal or transfer
17 facility.

18 (4) "Log storage" means the water storage of logs in rafts or
19 otherwise prepared for shipment in water-borne commerce, but does not
20 include the temporary holding of logs to be taken directly into a
21 vessel or processing facility.

22 (5) "Log booming" means placing logs into and taking them out of
23 the water, assembling and disassembling log rafts before or after their
24 movement in water-borne commerce, related handling and sorting
25 activities taking place in the water, and the temporary holding of logs
26 to be taken directly into a processing facility. "Log booming" does
27 not include the temporary holding of logs to be taken directly into a
28 vessel.

29 (6) "Department" means the department of natural resources.

30 (7) "Port district" means a port district created under Title 53
31 RCW.

32 (8) The "real rate of return" means the average for the most recent
33 ten calendar years of the average rate of return on conventional real
34 property mortgages as reported by the federal home loan bank board or
35 any successor agency, minus the average inflation rate for the most
36 recent ten calendar years.

37 (9) The "inflation rate" for a given year is the percentage rate of
38 change in the previous calendar year's all commodity producer price
39 index of the bureau of labor statistics of the United States department

1 of commerce. If the index ceases to be published, the department shall
2 designate by rule a comparable substitute index.

3 (10) "Public utility lines" means pipes, conduits, and similar
4 facilities for distribution of water, electricity, natural gas,
5 telephone, other electronic communication, and sewers, including sewer
6 outfall lines.

7 (11) "Terminal" means a point of interchange between land and water
8 carriers, such as a pier, wharf, or group of such, equipped with
9 facilities for care and handling of cargo and/or passengers.

10 (12) "State-owned aquatic lands" means those aquatic lands and
11 waterways administered by the department of natural resources or
12 managed under RCW 79.90.475 by a port district. "State-owned aquatic
13 lands" does not include aquatic lands owned in fee by, or withdrawn for
14 the use of, state agencies other than the department of natural
15 resources.

16 (13) "City" means a city or town created under Title 35 or 35A RCW.

17 (14) "Marina" means a waterfront facility that provides moorage for
18 recreational vessels, charter vessels, commercial fishing vessels, and
19 water-based aircraft. A marina facility may include fuel docks and
20 associated chandlery activities designed to serve recreational vessels,
21 charter vessels, commercial fishing vessels, and water-based aircraft.

22 (15) "Harbor management plan" means a plan adopted by the governing
23 body of a city and providing, at a minimum, for the protection and
24 maintenance of maritime navigation, safe and friendly mooring and
25 anchoring for resident and transient vessels, the maintenance and
26 improvement of water quality and aquatic resources, the development and
27 improvement of maritime facilities for resident and transient users,
28 the preservation of natural resources and protection of fish and
29 wildlife, the support of maritime commerce, the preservation and
30 enhancement of public access to harbors, the enforcement of applicable
31 laws, and the enhancement of public health, safety, and welfare.

32 **Sec. 2.** RCW 79.90.475 and 1984 c 221 s 6 are each amended to read
33 as follows:

34 Upon request of a port district, the department and port district
35 may enter into an agreement authorizing the port district to manage
36 state-owned aquatic lands (~~(abutting or used in conjunction with and~~
37 ~~contiguous to uplands owned, leased, or otherwise managed by a port~~
38 ~~district,~~) for port purposes as provided in Title 53 RCW. The lands

1 that may be included in a port district aquatic lands management
2 agreement are those state-owned aquatic lands abutting or used in
3 conjunction with and contiguous to uplands owned, leased, or otherwise
4 managed by a port district. All state-owned aquatic lands beneath
5 public marina facilities developed or maintained by a port district are
6 eligible for management by the port district under a management
7 agreement.

8 ((Such)) A port district aquatic lands management agreement shall
9 include, but not be limited to, provisions defining the specific area
10 to be managed, the term, conditions of occupancy, reservations,
11 periodic review, and other conditions to ensure consistency with the
12 state Constitution and the policies of this chapter. If a port
13 district acquires operating management, lease, or ownership of real
14 property which abuts state-owned aquatic lands currently under lease
15 from the state to a person other than the port district, the port
16 district shall manage such aquatic lands if: (1) The port district
17 acquires the leasehold interest in accordance with state law, or (2)
18 the current lessee and the department agree to termination of the
19 current lease to accommodate management by the port. The
20 administration of aquatic lands covered by a port district aquatic
21 lands management agreement shall be consistent with the aquatic land
22 policies of chapters 79.90 through 79.96 RCW and the implementing
23 ((regulations)) rules adopted by the department. The administrative
24 procedures for management of the lands shall be those of Title 53 RCW.

25 No rent shall be due the state for the use of state-owned aquatic
26 lands managed under this section for water-dependent or water-oriented
27 uses. If a port district manages state-owned aquatic lands under this
28 section and either leases or otherwise permits any person to use such
29 lands, the rental fee attributable to such aquatic land only shall be
30 comparable to the rent charged lessees for the same or similar uses by
31 the department: PROVIDED, That a port district need not itemize for
32 the lessee any charges for state-owned aquatic lands improved by the
33 port district for use by carriers by water. If a port leases state-
34 owned aquatic lands to any person for nonwater-dependent use, eighty-
35 five percent of the revenue attributable to the rent of the state-owned
36 aquatic land only shall be paid to the state.

37 Upon application for a management agreement, and so long as the
38 application is pending and being diligently pursued, no rent shall be
39 due the department for the lease by the port district of state-owned

1 aquatic lands included within the application for water-dependent or
2 water-oriented uses.

3 The department and representatives of the port industry shall
4 develop a proposed model management agreement which shall be used as
5 the basis for negotiating the management agreements required by this
6 section. The model management agreement shall be reviewed and approved
7 by the board of natural resources.

8 NEW SECTION. **Sec. 3.** A new section is added to chapter 79.90 RCW
9 to read as follows:

10 (1) Upon request of a city, the department and city may enter into
11 an agreement authorizing the city to manage state-owned aquatic lands
12 for the purpose of operating a publicly owned marina. The lands that
13 may be included in a city aquatic lands management agreement are those
14 state-owned aquatic lands abutting or used in conjunction with and
15 contiguous to uplands owned, leased, or otherwise managed by a city.
16 All state-owned aquatic lands beneath any publicly owned marina
17 developed or maintained by a city are eligible for management by the
18 city under a management agreement.

19 A city aquatic lands management agreement shall include, but not be
20 limited to, provisions defining the specific area to be managed, the
21 term, conditions of occupancy, reservations, periodic review, and other
22 conditions to ensure consistency with the state Constitution and the
23 policies of this chapter. If a city acquires operating management,
24 lease, or ownership of real property that abuts state-owned aquatic
25 lands currently under lease from the state to a person other than the
26 city, the city shall manage the aquatic lands if: (a) The city
27 acquires the leasehold interest in accordance with state law, or (b)
28 the current lessee and the department agree to termination of the
29 current lease to accommodate management by the city. The
30 administration of aquatic lands covered by a city aquatic lands
31 management agreement shall be consistent with the aquatic land policies
32 of chapters 79.90 through 79.96 RCW and the implementing rules adopted
33 by the department. The administrative procedures for management of the
34 lands shall be those of Title 35 or 35A RCW, whichever is appropriate.

35 No rent is due the state for the use of state-owned aquatic lands
36 managed under this section for water-dependent or water-oriented uses.
37 If a city manages state-owned aquatic lands under this section and
38 either leases or otherwise permits any person to use the lands, the

1 rental fee attributable to the aquatic land only shall be comparable to
2 the rent charged lessees for the same or similar uses by the
3 department. If a city leases state-owned aquatic lands to any person
4 for nonwater-dependent use, eighty-five percent of the revenue
5 attributable to the rent of the state-owned aquatic land only shall be
6 paid to the state.

7 Upon application for a management agreement, and so long as the
8 application is pending and being diligently pursued, no rent is due the
9 department for the lease by the city of state-owned aquatic lands
10 included within the application for water-dependent or water-oriented
11 uses.

12 The department and representatives of the association of Washington
13 cities shall develop a proposed model management agreement that shall
14 be used as the basis for negotiating the management agreements required
15 by this section. The model management agreement shall be reviewed and
16 approved by the board of natural resources.

17 (2) A city that operates a publicly owned marina within the
18 territorial limits of a port district shall obtain the approval of the
19 port commission prior to applying to the department for a management
20 agreement. A city with marina facilities in existence on the effective
21 date of this act may enter into a management agreement for those
22 facilities without port commission approval.

23 NEW SECTION. **Sec. 4.** A new section is added to chapter 79.90 RCW
24 to read as follows:

25 (1) Upon request of a city, the department and city may enter into
26 an agreement authorizing the city to manage all or part of state-owned
27 aquatic lands within its jurisdiction for the purpose of implementing
28 a harbor management plan.

29 A city aquatic lands management agreement shall include, but not be
30 limited to, provisions defining the specific area to be managed, the
31 term, conditions of occupancy, reservations, periodic review, and other
32 conditions to ensure consistency with the state Constitution and the
33 policies of this chapter. A city shall manage state-owned aquatic
34 lands currently under lease from the state to a person other than the
35 city if: (a) The city acquires the leasehold interest in accordance
36 with state law, or (b) the current lessee and the department agree to
37 termination of the current lease to accommodate management by the city.
38 The city shall assume management of aquatic lands otherwise within the

1 area to be managed upon expiration of existing leases to any person
2 other than the city. The administration of aquatic lands covered by a
3 city aquatic lands management agreement shall be consistent with the
4 aquatic land policies of chapters 79.90 through 79.96 RCW and the
5 implementing rules adopted by the department. The administrative
6 procedures for management of the lands shall be those of Title 35 or
7 35A RCW, whichever is appropriate.

8 No rent is due the state for the use of state-owned aquatic lands
9 managed under this section for water-dependent or water-oriented uses.
10 If a city manages state-owned aquatic lands under this section and
11 either leases or otherwise permits any person to use the lands, the
12 rental fee attributable to the aquatic land only shall be comparable to
13 the rent charged lessees for the same or similar uses by the
14 department. If a city leases state-owned aquatic lands to any person
15 for nonwater-dependent use, eighty-five percent of the revenue
16 attributable to the rent of the state-owned aquatic land only shall be
17 paid to the state.

18 Upon application for a management agreement, and so long as the
19 application is pending and being diligently pursued, no rent is due the
20 department for the lease by the city of state-owned aquatic lands
21 included within the application for water-dependent or water-oriented
22 uses.

23 The department and representatives of the association of Washington
24 cities shall develop a proposed model management agreement that shall
25 be used as the basis for negotiating the management agreements required
26 by this section. The model management agreement shall be reviewed and
27 approved by the board of natural resources.

28 (2) A city that implements a harbor management plan within the
29 territorial limits of a port district shall obtain the approval of the
30 port commission prior to applying to the department for a management
31 agreement. A city with a harbor management plan adopted before the
32 effective date of this act may enter into a management agreement for
33 those facilities without port commission approval.

34 **Sec. 5.** RCW 79.90.520 and 1991 c 64 s 1 are each amended to read
35 as follows:

36 The manager shall, by rule, provide for an administrative review of
37 any aquatic land rent proposed to be charged. The rules shall require
38 that the lessee or applicant for release file a request for review

1 within thirty days after the manager has notified the lessee or
2 applicant of the rent due. For leases issued by the department, the
3 final authority for the review rests with the board of natural
4 resources. For leases managed under RCW 79.90.475, the final authority
5 for the review rests with the appropriate port commission. For leases
6 managed under section 3 or 4 of this act, the final authority for the
7 review rests with the appropriate city legislative authority. If the
8 request for review is made within thirty days after the manager's final
9 determination as to the rental, the lessee may pay rent at the
10 preceding year's rate pending completion of the review, and shall pay
11 any additional rent or be entitled to a refund, with interest thirty
12 days after announcement of the decision. The interest rate shall be
13 fixed, from time to time, by rule adopted by the board of natural
14 resources and shall not be less than six percent per annum. Nothing in
15 this section abrogates the right of an aggrieved party to pursue legal
16 remedies. For purposes of this section, "manager" is the department
17 except where state-owned aquatic lands are managed by a port district
18 or a city, in which case "manager" is the appropriate port district or
19 city.

20 **Sec. 6.** RCW 79.93.040 and 1984 c 221 s 21 are each amended to read
21 as follows:

22 If the United States government has established pierhead lines
23 within a waterway created under the laws of this state at any distance
24 from the boundaries established by the state, structures may be
25 constructed in that strip of waterway between the waterway boundary and
26 the nearest pierhead line only with the consent of the department of
27 natural resources and upon such plans, terms, and conditions and for
28 such term as determined by the department. However, no permit shall
29 extend for a period longer than thirty years.

30 The department may cancel any permit upon sixty days' notice for a
31 substantial breach by the permittee of any of the permit conditions.

32 If a waterway is within the territorial limits of a port district,
33 the duties assigned by this section to the department may be exercised
34 by the port commission of such port district as provided in RCW
35 79.90.475. If a waterway is within the territorial limits of a city,
36 the duties assigned by this section to the department may be exercised
37 by the city as provided in section 3 or 4 of this act.

1 Nothing in this section shall confer upon, create, or recognize in
2 any abutting owner any right or privilege in or to any strip of
3 waterway abutting any street and between prolongations of the lines of
4 such street, but the control of and the right to use such strip is
5 hereby reserved to the state of Washington, except as authorized by RCW
6 79.90.475 and section 3 or 4 of this act.

--- END ---